

73 Am. Jur. 2d Subrogation § 19

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Subrogation

Lucas D. Martin, J.D.

II. Elements or Conditions of Subrogation and Principles Governing

B. Classes of Persons Entitled to Subrogation

§ 19. Parties entitled to subrogation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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To be entitled to subrogation, one must pay a debt for which another is liable.¹ Generally speaking, certain persons are excluded and included in the class of persons who are entitled to subrogation with those being excluded pertaining to those who discharge debts on which their liability is primary.² In other words, there can be no right of subrogation when one pays a debt that he is obligated to pay,³ nor is subrogation available to one who simply pays his own debt.⁴ Equitable subrogation is not a remedy available to a lender that refinances the original debt owed to it.⁵

Recognized inclusions include principals who are vicariously liable for the acts of their agents or servants;⁶ the state or local government—for example, where a debt is paid from a fund to benefit uninsured motorists,⁷ where a State paid medical bills after an inmate sustained injuries,⁸ or where a sheriff paid an obligation to a judgment creditor following his failure to levy upon debtors' property;⁹ and the federal government.¹⁰

Observation:

As some courts have noted, in determining what types of parties are entitled to subrogation, a key consideration is whether the party making the payment was compelled to pay another's debt; under that circumstance, the party paying the debt has right to subrogation.¹¹ The courts also consider whether a direct or derivative obligation is involved.¹²

CUMULATIVE SUPPLEMENT

Cases:

Under Vermont law, in order for equitable subrogation to apply, the party paying the debt must not have been primarily liable for the debt paid, and that party must have paid the entire debt. [GMAC Mortg., LLC v. Orcutt, 506 B.R. 52 \(D. Vt. 2014\)](#).

Merchant was not equitably subrogated to any rights of bank, which acted as acquirer that facilitated credit card purchases at merchant, as against credit card company with respect to assessments imposed by company against bank in connection with data security breaches on merchant's computer system, and, thus, merchant failed to state claims against company for breach of contract and breach of implied duty of good faith and fair dealing based on theory of equitable subrogation, since bank withheld corresponding payments from merchant pursuant to indemnification clause in their contract, which obligated merchant to indemnify bank for any assessments imposed by company even in cases where company violated contract or law by imposing such assessments. [Jetro Holdings, LLC v. MasterCard International, Inc., 166 A.D.3d 594, 88 N.Y.S.3d 193 \(2d Dep't 2018\)](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Countryside Co-op. v. Harry A. Koch Co., 280 Neb. 795, 790 N.W.2d 873 \(2010\)](#).
- ² [Pirelli-Armstrong Tire Corp. v. Midwest-Werner & Pfleiderer, Inc., 540 N.W.2d 647 \(Iowa 1995\)](#); [Deffenbaugh Industries, Inc. v. Wilcox, 28 Kan. App. 2d 19, 11 P.3d 98 \(2000\)](#); [Kentucky Hosp. Ass'n Trust v. Chicago Ins. Co., 978 S.W.2d 754 \(Ky. Ct. App. 1998\)](#); [American Nursing Resources, Inc. v. Forrest T. Jones & Co., Inc., 812 S.W.2d 790 \(Mo. Ct. App. W.D. 1991\)](#); [Leader Nat. Ins. Co. v. American Hardware Ins. Group, 249 Neb. 783, 545 N.W.2d 451 \(1996\)](#); [PIE Mut. Ins. Co. v. Ohio Ins. Guar. Assn., 66 Ohio St. 3d 209, 1993-Ohio-180, 611 N.E.2d 313 \(1993\)](#); [Bennett Truck Transport, LLC v. Williams Bros. Const., 256 S.W.3d 730 \(Tex. App. Houston 14th Dist. 2008\)](#).
- ³ [Del E. Webb Hotel Co. v. Bentley, 8 Ariz. App. 408, 446 P.2d 687 \(1968\)](#); [Mortoro v. Maloney, 580 So. 2d 822 \(Fla. 5th DCA 1991\)](#).
- ⁴ [In re New England Fish Co., 749 F.2d 1277 \(9th Cir. 1984\)](#); [Mortoro v. Maloney, 580 So. 2d 822 \(Fla. 5th DCA 1991\)](#); [Benedictine Hosp. v. Gleissing, 90 A.D.3d 1383, 935 N.Y.S.2d 683 \(3d Dep't 2011\)](#).
- ⁵ [Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 \(2011\)](#).
- ⁶ [Bair v. Peck, 248 Kan. 824, 811 P.2d 1176 \(1991\)](#).
- ⁷ [People v. Orweller, 197 Mich. App. 136, 494 N.W.2d 753 \(1992\)](#).
- ⁸ [Holloway v. State, 125 N.J. 386, 593 A.2d 716 \(1991\)](#).
- ⁹ [Niell v. Mooney, 575 S.W.2d 147 \(Tex. Civ. App. Eastland 1978\)](#), writ refused n.r.e., (Mar. 21, 1979).
- ¹⁰ [U.S. v. California, 507 U.S. 746, 113 S. Ct. 1784, 123 L. Ed. 2d 528 \(1993\)](#).
- ¹¹ [In re Stendardo, 991 F.2d 1089 \(3d Cir. 1993\)](#), as amended, (June 21, 1993) (applying Pennsylvania law); [Iowa Nat. Mut. Ins. Co. v. Liberty Mut. Ins. Co., 464 N.W.2d 564 \(Minn. Ct. App. 1990\)](#).
- ¹² [Sehremelis v. Farmers & Merchants Bank, 6 Cal. App. 4th 767, 7 Cal. Rptr. 2d 903, 17 U.C.C. Rep. Serv. 2d 831 \(2d Dist. 1992\)](#) (holding a bank's negotiating checks drawn by a lender on borrowers' construction loan accounts which were allegedly deposited with forged, missing, or otherwise unauthorized endorsements did not provide the borrowers with a cause of action against the collecting bank for equitable subrogation where to the extent that the borrowers paid

the lender under loan agreements for the proceeds of a check which the collecting bank improperly negotiated, the borrowers' own rights of action were direct and not derivative).

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